

REMARKS

Claims 18-23 have previously been withdrawn. Claims 1-17 have been rejected.
Claims 1-17 remain in the application.

Election/Restrictions

Applicants confirm the election of (Group I) claims 1-17.

Drawings

The objection to the drawings is respectfully traversed. FIGS. 12-14 of the application illustrate a device falling within the scope of claims 2, 7, 11 and 16. As described in paragraph [0063] of the published application:

Another alternative embodiment of a protector 28C is shown in FIGS. 12-14. In this embodiment, the protector comprises a first or proximal portion 74 and a second or distal portion 76. The two portions 74, 76 are joined together along an axis 78 through two hinge portions 80, 82 in a clam shell configuration. The two portions 74, 76 are similarly shaped so that the first portion 74 essentially nests in the second portion 76. The distal facing surface of the distal portion 76 has two areas that each have a convex contour to be received in the concave contours of the proximal surface 38 of the insert trial 30C. The proximal surface of the proximal portion 74 has two areas with concave contours to receive the convexly contoured distal surfaces 14, 16 of the femoral trial 12A. In this embodiment, the sensor array 26A is received between the two portions 74, 76 of the protector.

Claim Rejections – 35 USC §102

Applicants respectfully traverse the rejection of claims 1-17 under 35 USC 102 as being anticipated by Hershberger et al.

In Hershberger et al., the sensor component is disclosed as being located on the planar upper surface 92 of the base member 84 of the tibial component, beneath the bearing elements 88, 90. (See Col. 6, lines 53-60). This location is illustrated in FIGS. 5 and 7, where element 150 is shown to be below elements 88 and 90. Thus, in Hershberger et al., the sensor element is flat – it does not rest upon or conform to a contoured articulating surface of a trial component.

There are no complementary mounting members in Hershberger et al. positioned so that the protector and sensor array may be temporarily secured on the curved contour of the articulating surface of a trial. Therefore, claim 1 and its dependent claims 2-4 are patentable over Hershberger et al.

The sensor in Hershberger et al. does not have a curved contour and there are no mating members in Hershberger et al. that temporarily fix the position of such a sensor array between the curved surface of a protector and the curved articulating surface of a trial. Accordingly, claim 5 and its dependent claims 6-9 are patentable over Hershberger et al.

In Hershberger et al. there is no curved contoured surface of a protector overlying a sensor array with a curved contour and with a stud temporarily fixing the position of at least part of the protector with respect to the trial. Accordingly, claim 10 and its dependent claim 11 are patentable over Hershberger et al.

In Hershberger et al. there is no sensor array that has a curved contour, is positioned between two curved contours and that is positively located with respect to either a protector or a trial. Accordingly, claim 12 and its dependent claims 13-17 are patentable over Hershberger et al.

Even if one were to consider element 86 of Hershberger et al. to comprise a protector, it does not have two portions joined along an axis with one portion overlying at least part of the curved articulating surface of a trial and with another portion overlying a substantial part

of a sensor array and a substantial part of the first portion. Accordingly, claims 2, 7, 11 and 16 are independently patentable over Hershberger et al.

Finally, Hershberger et al. is not seen to disclose or suggest a trial and protector that are capable of being snap fit together with the sensor array between the protector and the curved contour of the articulating surface of the trial to temporarily combine the protector, sensor array and trial into an assembly for use. Accordingly, claim 9 is independently patentable over Hershberger et al.

Conclusion

It is believed that the claims 1-17 are in condition for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

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